IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03/11/2003

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THE HONOURABLE MR. JUSTICE D. MURUGESAN

WRIT PETITION NO.17247 OF 2001
and
W.P.M.P.No.36928/2003

K. Appanraj .. Petitioner

--Vs-

1. The Secretary to Government
of India, Ministry of Home Affairs
Freedom Fighters Division
I Floor Lok Nayak Bhavan, New Delhi.

2. The Deputy Secretary to Government
of India, Ministry of Home Affairs
Freedom Fighters Division
I Floor, Lok Nayak Bhavan, New Delhi.

3. The Under Secretary to Government
of India, Ministry of Home Affairs
Grih Mantralaya, Freedom Fighters
Division, Jaisalmer House
Mansingh Road, New Delhi.11.

4. The Secretary to Government
Public (PP-1) Department
Fort St. George, Chennai.9. .. Respondents

Petition filed under Article 226 of The Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for the records of the 3rd respondent in No.52/CC/284/2000-FF(Lit.II)SZ dated 30.11.2000 and quash the same and direct the respondents herein to pay "Swatantrata Sainik Samman Pension" and all other connected benefits with arrears to the petitioner.

!For petitioner .... Mr.V.N. Mohanraj

^For respondents .... Mr.K. Rajendran
1 to 3 Senior Central Govt.
Standing Counsel

For 4th respondent ... Mr.S.V.Duraisolaimalai
Govt. Advocate

:ORDER

The petitioner, 80 years old has a sad story to tell this Court in regard to his unsuccessful attempt to get the pension under the scheme for over a period of 23 years. The petitioner while he was studying in American Collage at Madurai during the year 1942, took active participation in freedom movement and underwent lot of physical and mental sufferings and then onwards went underground for fighting British Rule for freedom for years. He made request for freedom pension. He also produced various certificates issued by Ex. M.P. & Ex.M.L.A. Mr. Anthoni Pillai to contend that he was also involved in the freedom struggle. Nevertheless, the representation of the petitioner was not considered and therefore, he filed W.P.No.10168/2000 before this Court which was disposed on 11.10.2000 by directing the respondents to consider the representation of the petitioner and pass orders. Pursuant to the said direction, the representation of the petitioner was considered by the impugned order dated 30.11.2000 and the request of the petitioner was rejected. Hence the petitioner has come forward with the present Writ Petition before this Court.

2. According to the petitioner, he participated in the freedom struggle along with Mr.C. Anthoni Pillai, Secretary, Port and Dock Workers' Federation, Madras. He has enclosed the Certificate dated 13.1.1 992 issued by the said Anthoni Pillai wherein it is stated that the petitioner was an active member in the freedom movement and he took part in the freedom movement along with Anthoni Pillai, Thiru R. Venkataraman, Former President of India, Bodi Muthiah, Ramaswamy and others. Though others were arrested, the petitioner managed to escape and went underground. Hence, he is entitled to the pension under the scheme.

3. Per contra, it is the case of the respondents that in the absence of any proof that the petitioner was declared either proclaimed offender or one on whom an award for arrest was announced or one for whose detention, order was issued but not served,he is not eligible for pension under the Scheme.
4. During the Silver Jubilee year of Independence, a Central Scheme for grant of pension to freedom fighters and their families was introduced by the Government of India with effect from 15.8.1972. The said Scheme was liberalised and renamed as "Swatantrata Sainik Samman Pension Scheme 1980" and was made effective from 1.8.1980. All the claims of freedom fighters are governed by the provisions of the Scheme. One of the conditions for eligibility is either imprisonment or the person who remained underground. The petitioner claims pension on the ground that he remained underground and therefore, he is entitled as per clause 2.3 of the Scheme. The said clause reads as follows:

2.3 Underground:- A person who on account of his participation in freedom struggle remained under-ground for more than six months provided he was;

A. a proclaimed offender or
B. one on whom an award for arrest was announced; or
C. one for whose detention, order was issued but
not served"

5. Courts have held that Certificates of co-prisoners in the case of imprisonment or Certificate of persons who had personal knowledge of the involvement of the persons in the freedom movement would be sufficient for a person to claim freedom fighter pension. How the matter like this, should be approached by the Courts is broadlined by the Apex Court in the judgment reported in GURDIAL SINGH VS UNION OF INDIA AND OTHERS (2001 (8) Supreme Court Cases 8)
In para 6 and 7 it has been held as follows:

" The Scheme was introduced with the object of providing grant of pension to living freedom fighters and their families and to the families of martyrs. It has to be kept in mind that millions of masses of this Country had participated in the freedom struggle without any expectation of grant of any scheme at the relevant time. It has also to be kept in mind that in the partition of the country most of the citizens who suffered imprisonment were handicapped to get the relevant record from the jails where they had suffered imprisonment. The problem of getting the record from a foreign country is very cumbersome and expensive. Keeping in mind the object of the Scheme, the authorities concerned are required that in appreciating the Scheme for the benefit of freedom fighters a rational and not a technical approach is required to be adopted. It has also to be kept in mind that the claimants of the Scheme are supposed to be such persons who had given the best part of their life for the country. This Court in Mukund Lal Bhandari Case observed (SCC pp7-8 para 9)

"The object in making the said relaxation was not to reward or compensate the sacrifices made in the freedom struggle. The object was to honour and where it was necessary, also to mitigate the sufferings of those who had given their all for the country in the hour of its need. In fact, many of those who do not have sufficient income to maintain themselves refuse to take benefit of it, since they consider it as an affront to the sense of patriotism with which they plunged in the freedom struggle. The spirit of the Scheme being both to assist and honour the needy and acknowledge the valuable sacrifices

made, it would be contrary to its spirit to convert it into some kind of a programme of compensation. Yet that may be the result if the benefit is directed to be given retrospectively whatever the date the application is made. The Scheme should retain its high objective with which it was motivated. It should not further be forgotten that now its benefit is made available irrespective of the income limit. Secondly, and this is equally important to note, since we are by this decision making the benefit of the Scheme available irrespective of the date on which the application is made, it would not be advisable to extend the benefit retrospectively. Lastly, the pension under the present Scheme is not the only benefit made available to the freedom fighters or their dependants. The preference in employment, allotment of accommodation and in admission to schools and colleges to their kith and kin etc., are also the other benefits which have been made available to them for quite sometime now."

The court categorically mentioned that the pension under the Scheme should be made payable from the date on which the application is made whether it is accompanied by necessary proof of eligibility or not.

7. The standard of proof required in such cases is not such standard which is required in a criminal case or in a case adjudicated upon rival contentions or evidence of the parties. As the object of the Scheme is to honour and to mitigate the sufferings of those who had given their all for the country, a liberal and not a technical approach is required to be followed while determining the merits of the case of a person seeking pension under the Scheme. It should not be forgotten that the persons intended to be covered by the Scheme had suffered for the country about half-a-century back and had not expected to be rewarded for the imprisonment suffered by them. Once the country has decided to honour such freedom fighters, the bureaucrats entrusted with the job of examining the cases of such freedom fighters are expected to keep in mind the purpose and object of the Scheme. The case of the claimants under this Scheme is required to be determined on the basis of the proba-

bilities and not on the touchstone of the test of "beyond reasonable doubt". Once on the basis of the evidence it is probabilised that the claimant had suffered imprisonment for the cause of the country and during the freedom struggle, a presumption is required to be drawn in his favour unless the same is rebutted by cogent, reasonable and reliable evidence"

6. Since the petitioner has projected his story in fighting for the grant of pension for a quite number of years and in spite of the directions of this Court to consider the representation, he is unable to get pension, the Writ Petition can be disposed of on merits instead of remanding the same again for reconsideration.

7. The only clinching evidence in support of the petitioner is the Certificate issued by C. Anthoni Pillai dated 13.1.1992. The said Certificate reads as under:

This is to state that I am allowed the pension and benefits granted by the Government of India for freedom fighters, under the pension numbered PPD No.8629 of 1963.
I was born in Ceylon/Sri Lanka and came over to India, initially to Madurai in July,1942, as soon as I learnt that Gandhiji was about to launch the final struggle for India's independence.
While I was in Ceylon/Sri Lanka, in early 1942, a warrant was issued for my arrest, for taking an active and prominent part in the struggle for independence from British Rule. But as I went underground, a sum of Rupees Ten thousand was announced for any person giving information for my arrest.
Even prior to my coming over to Madurai, by a sailing boat, I had established contact with some of the prominent and active congress leaders, such as the late Sri. T.G.Krishnamurthy (Ex MLC) the late A.K. Ponnambalam and Bodi Muthiah, who were allowed freedom fighter pension, and who accorded us facilities to continue the fight for freedom from British Rule, while evading arrest.
Though the above mentioned freedom fighters, I became a closely associated with Shri K. Appanraj, son of late Sri M. Karuppa Servai who was then residing at No.8, Mamundy Vathis Lane, East Masi Street, Madurai and who is currently residing at No.54, Kamarajar Salai Tiruvanmaiyur, Madras.41. From direct personal

knowledge, this is to state that in August, 1942 Sri Appanraj who was a student in the American College, Madurai took an very active part in mobilising the students for the Quit India struggle for independence, and was

leading processions and agitations against imperialism, shortly before on and after the quit India movement was launched by Gandhiji.

He actively participated with me also in the underground activities of mobilising for the struggle for independence. Industrial Workers employed in establishments such as the Madurai Textile Mills and getting cyclostyled leaflats distributed among students and workers, with the help of Sarvashri Bodi Muthiah, T.C. Krishnamoorthy and UMK Ramaswamy- all of whom were allowed freedom fighters' pension as they were arrested and imprisoned.
When the houses of some of my colleague at Madurai were raided by the police, myself and Sarwashri Appanraj, Bodi Muthiah and Ramaswamy came over to Madras and resided with me in the out house of Shri Ambi Iyer in Kilpauk, All of us were arrested but Mr. Appanraj escaped arrest and continued active underground work with the assistance of the revered Tamil Scholar and trade Union Leader Thiru-Vi-Ka (T.V. Kalyanasundaram)
Because of such active work among the B&C Mill Workers by Com.Appanraj during the war years, on my release from Alipuram Jail, Thiru R. Venakataraman (Currently President of India) and myself were elected Vice-President of the Madras Labour Union respectively.
Thiru Appanraj was very active in the Congress Party, and under Kamaraj's leadership he was nominated by him as the General Secretary of the Tamil Nadu Congress party.
As he was very active in the struggle for independence,I very strongly recommend that he be given the designation of "Freedom Fighter" and allowed the benefit due to him for having been an active fighter for securing India's independence from foreign rule."

8. From the above certificate, it is clear that the petitioner was an

active freedom fighter and though others were arrested, the petitioner was managed to escape and remained underground. In order to satisfy the conditions for getting pension,he should come within any one of the category A,B,C of Clause 2.3 of the Scheme. Admittedly the petitioner is not a proclaimed offender or one of whom an award for arrest was announced or issued. Reliance placed by the petitioner for entitlement is Clause C of 2.3 of the Scheme which relates to one for whose detention, order was issued but not served. It is the case of the respondents that as far as the petitioner is concerned, there was no detention order passed. This submission is not supported by any material as admittedly no records are traceable. In the absence of records, the entitlement of the petitioner for freedom pension should be considered only on the basis of the Certificate produced by him. While appreciating the Certificate this Court should bear in mind that strict rule of proof cannot be insisted while considering the grant of pension. Mr. Anthoni Pillai, who also involved in the freedom movement and was granted freedom pension, has certified that though he was arrested, the petitioner was managed to escape and went underground and from the above, it must be reasonably presumed that detention order was issued against the petitioner but not served and only for that reason, he had remained underground. Otherwise, question of going underground does not arise. The object of the Scheme is to provide pension to Freedom fighters and their families. When the scheme is introduced to benefit the freedom fighters, the entitlement cannot be scuttled by mere technicalities. Provisions of the Scheme shall always be interpreted and given effect only in favour of the freedom fighters. If claims are negatived on mere technicalities, we will be failing in our duty to respect those who had undergone the ordeal and missery in getting the freedom. I find no justification whatsoever in the impugned order in rejecting the request of an 80 years old Freedom fighter for his pension. I find that the petitioner is eligible for the grant of freedom fighter pension under the Scheme. In the impugned order, I find no other reason except the reason that the petitioner has not produced any document to show that he remained underground. Therefore, the grievance of the petitioner has to be accepted and I find merit in the Writ Petition. Further, in the counter affidavit it is admitted that the petitioner has submitted his application on 1.9 .1982.

9. Accordingly, the Writ Petition is allowed and the respondents are directed to grant Freedom Fighter pension to the petitioner from 1.9 .1982 and pay the arrears within a period two months from the date of receipt of copy of this order. No costs. Consequently,W.P.M.P.No.36 928/2003 is closed.

Index: Yes
Website: Yes

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To

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of India, Ministry of Home Affairs

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